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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/566,577 | 05/31/2006 | Louis Briard | 0512-1321 | 5139 |
| <div>466 7590 03/24/2009</div> <div>YOUNG & THOMPSON 209 Madison Street Suite 500 ALEXANDRIA, VA 22314</div> | | | | |
| EXAMINER COTRONEO, STEVEN J | | | | |
| ART UNIT 3733 | | PAPER NUMBER | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/566,577

Applicant(s)

BRIARD ET AL.

Examiner

STEVEN J. COTRONEO

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 8-11, 13, 16 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 8-11, 13, 16 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 8-11, 13, 16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckhoff (U.S. 5,669,914) in view of Rehder (U.S. 4,865,606).

Eckhoff discloses a device (see fig 1 below) for dynamic tensioning of a natural or prosthetic knee joint, with or without a tibial cut being carried out, of the type comprising at least one femoral insert (fig 1, 40) which has a condyle support surface for a femoral implant or bone; at least one tibial insert (fig 1, 60) which has a support surface for a tibial plate for a tibial implant or bone; and means (fig 1, 82) for applying, between the femoral and tibial inserts, a distraction force of a predetermined strength, with or without the kneecap being in position, characterized in that it is constructed so as to allow rotation of the joint and comprises means for maintaining the knee in a state of tension during rotation (col. 3, ll. 63-65), and thus carrying out measurements for various angles of rotation. The device is provided for the inner and outer compartment of the knee (fig 1). The device includes means for measuring the spacing of the surfaces and the distraction force (fig 4, 89 and col. 9, ll. 28-35). The means for applying the distraction force comprises a force generation unit (fig 1, 82) and a pair of branches (fig 1, 44).

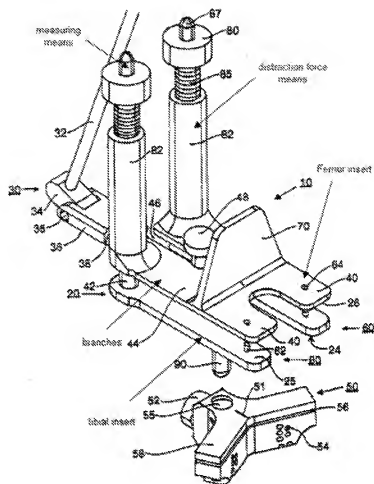
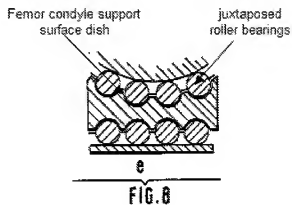


FIG. 1

Eckhoff discloses the claimed invention except for a sliding means for the femoral implant or bone when the knee joint is displaced comprising juxtaposed rollers, and the condyle surface is in the form of a dish.

Rehder discloses a sliding means for the femoral implant or bone when the knee joint is displaced, comprising juxtaposed rollers (fig 8e top surface) to allow for pure rotational movement of the knee (col. 3, ll. 22-30).

Rehder also discloses the condyle surface is in the form of a dish (fig 8e and col. 7, ll. 7-9) to prevent lifting (col. 7, ll. 7-10).



It would have been obvious at the time of the invention to one of ordinary skill in the art to modify the device of Eckhoff with a sliding means for the femoral implant or bone when the knee joint is displaced comprising juxtaposed rollers, and the condyle surface is in the form of a dish in view of Rehder in order to allow for pure rotational movement of the knee and to prevent lifting.

As to claim 20, Rehder discloses the claimed invention except for the maximum thickness of the inserts is less than or equal to 2.5mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made for the maximum thickness of the inserts is less than or equal to 2.5mm since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Response to Arguments

Applicant's arguments, see "Remarks," page 3, filed 7/18/2008, with respect to objection to the specification have been fully considered and are persuasive do to applicant's amendment. The objection of specification has been withdrawn.

Applicant's arguments with respect to claims 1-2, 8-11, 16 and 20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record PTO-892 and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN J. COTRONEO whose telephone number is (571)270-7388. The examiner can normally be reached on M-F 730-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. J. C./
Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733